

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: AFTERMARKET FILTERS
ANTITRUST LITIGATION**

**Master Docket No. 08-cv-4883
MDL Docket No. 1957**

**This Document Relates To:
All Purchaser Actions**

Honorable Robert W. Gettleman

**PLAINTIFFS' SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
AMENDED OMNIBUS MOTION FOR PRELIMINARY APPROVAL OF
PROPOSED SETTLEMENTS; CERTIFICATION OF SETTLEMENT CLASSES;
APPOINTMENT OF CLASS COUNSEL FOR THE SETTLEMENT CLASSES;
AUTHORIZATION TO DISSEMINATE NOTICE TO SETTLEMENT CLASSES;
AND SETTING A HEARING ON FINAL SETTLEMENT APPROVAL**

I. INTRODUCTION

On January 20, 2012, the Court ordered Plaintiffs to file a supplemental statement on or before January 27, 2012, describing the areas of agreement and/or disagreement concerning Plaintiffs' Omnibus Motion, including the proposed form of mailed notices. As described below, Plaintiffs and Non-Settling Defendants have resolved their two disputes concerning the Omnibus Motion, which involved the production of customer lists (Plaintiffs are withdrawing their request) and the language in the proposed mailed notices (the parties agreed to additional language). Thus, there are no more impediments regarding Plaintiffs' Omnibus Motion seeking preliminary approval of partial settlements.

II. BACKGROUND

On October 11, 2011, the Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, and Gas Retailers' Class Plaintiffs (collectively, "Plaintiffs")¹ filed their Amended Omnibus Motion ("Omnibus Motion") for preliminary approval of partial settlements with Defendants Baldwin Filters, Inc., Cummins Filtration, Inc., and Donaldson Company, Inc. (collectively, "Settling Defendants") (Dkt. #833).²

At a status conference on October 12, 2011, the Court requested additional briefing on the Omnibus Motion to be filed no later than October 26, 2011, relating to the following matters: the propriety of partial settlements, the use of funds from the partial settlements to pay case expenses, and the production of customer lists by non-settling Defendants for notice purposes. The Court also permitted Defendants ArvinMeritor, Inc., Purolator Products NA, LLC, Purolator Products Company, LLC, Champion Laboratories, Inc., Wix Filtration Corp. LLC, Affinia Group, Inc and Honeywell International Inc. (collectively, "Non-Settling Defendants") to submit comments regarding the content of Plaintiffs' proposed mailed notices (attached as Exhibits A to Direct Purchaser Plaintiffs and Gas Retailers' Class Plaintiffs Supplemental Memoranda in support of the Omnibus Motion (Dkt. #835 and #836, respectively)).

On October 26, 2011, the parties filed their additional briefing. Plaintiffs filed a Supplemental Memorandum in support of their Omnibus Motion which, among other things, requested the production of customer lists by Non-Settling Defendants for notice purposes (Dkt. #842). Non-Settling Defendants filed briefing with the Court which proposed substantive

¹ All defined terms used herein are the same as in the Omnibus Motion.

² All of the Movants, together with the State of Florida, are parties to separate settlement agreements. Because the State of Florida filed an individual action, and not a class action, it is not a party to the Omnibus Motion. Counsel for each of the Settlement Classes contemporaneously filed a separate pleading to supplement the Omnibus Motion, setting forth the reasons why the Settlement Agreements should be approved with respect to its respective Settlement Class, among other things.

changes to Plaintiffs' proposed mailed notices to class members (Dkt. #841). Settling Defendants also filed additional briefing with the Court (Dkt. #843).

On November 4, 2011, Plaintiffs responded to Non-Settling Defendants' proposal to add language to the proposed mailed notices (Dkt. #845).

On November 15, 2011, Non-Settling Defendants responded to Plaintiffs' request for the production of customer lists (Dkt. #851).

III. PLAINTIFFS AND NON-SETTLING DEFENDANTS HAVE AGREED ON ADDITIONAL NOTICE LANGUAGE

In their November 4, 2011 response, Plaintiffs proposed adding the following language to the mailed notices:

A potential witness in the litigation pleaded guilty to making a false statement to the government based on the fabrication of a document purporting to be evidence of price-fixing among certain Defendants. This individual was convicted and sentenced to 24 months in prison and fined \$30,000. Both the Settling Defendants and non-settling Defendants deny Plaintiffs' allegations and deny that they engaged in any illegal activity. Plaintiffs are continuing to prosecute the action against the non-settling Defendants.

(Dkt. #845 and Exhs. A and B (amended mailed notices)). After conferring, Plaintiffs and Non-Settling Defendants have agreed to add this language to the proposed mailed notices. The proposed revised mailed notices are attached hereto as Exhibits A and B.³

IV. PLAINTIFFS HAVE AGREED TO WITHDRAW THEIR REQUEST FOR CUSTOMER LISTS

After conferring with Non-Settling Defendants, Plaintiffs are satisfied that they have received sufficient documentation from Non-Settling Defendants which identifies the names and

³ Also attached are Exhibits C and D. Exhibit C is Direct Purchaser Plaintiffs' proposed amended publication notice, reflecting use of the settlement funds for future expenses. Exhibit D is Gas Retailers' Class Plaintiffs' proposed amended publication notice, which reflects the same as well as some other minor changes, to which Settling Defendants and Non-Settling Defendants do not oppose.

addresses of potential class members for notice purposes. Therefore, Plaintiffs are hereby withdrawing their request for the production of such information.

V. CONCLUSION

Based on the foregoing, as well as for the reasons set forth in the Omnibus Motion, Interim Class Counsel for each of the Settlement Classes respectfully request that the Court preliminarily approve the partial settlements and approve the use, subject to application to the Court and Court approval, of the entire amount of the settlement fund (less notice costs) to pay for future litigation expenses.

Dated: January 27, 2012

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